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| 10/629,281      | 07/29/2003  | Aaron Heyniger       | SCH-031110          | 5703             |

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/629,281

Applicant(s)

HEYNIGER, AARON

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5 and 10-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 10-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Drawings***

1. The drawings were received on February 7, 2005. These drawings are approved by the examiner.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Vitello et al. (US 3,437,117).

To the degree claimed, container 10 provides a substantially fluid-tight cavity with a tab 20 adhered to one of the front and back surfaces and the opening 22 is considered a rounded slot.

***Claim Rejections - 35 USC § 103***

4. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vitello.

Wherein it can be argued the tab does not provide an adhesive edge requiring an adhesive material such as glue, it would have been obvious to one having ordinary skill in the art at the time the invention was made to since the examiner takes Official Notice of the equivalence of and for their use in the art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art.

Wherein the opening is not elongated and thus not considered a slot, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hang tab opening of an elongated shape to form a slot, since such a modification

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would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vitello in view of Petriekis et al. (US 6,200,300).

Vitello teaches the claimed bag apparatus except for a pair of hang tabs.

Petriekis teaches it is known to provide a hangable container with a single or a pair of hang apertures.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a pair of hang tabs to the bag of Vitello, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Doing so provides an alternative bag useable with a dual prong hanging device.

6. Claims 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vitello in view of Petriekis.

To the degree claimed, Vitello teaches the claimed bag apparatus, including a container 10 provides a substantially fluid-tight cavity with a tab 20 adhered to one of the front and back surfaces, except for a pair of hang tabs.

Petriekis teaches it is known to provide a hangable container with a single or a pair of hang apertures.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a pair of hang tabs to the bag of Vitello, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Doing so provides an alternative bag useable with a dual prong hanging device.

Wherein it can be argued the tab does not provide an adhesive edge requiring an adhesive material such as glue, it would have been obvious to one having ordinary skill in the

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art at the time the invention was made to since the examiner takes Official Notice of the equivalence of and for their use in the art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art.

Wherein the opening is not elongated and thus not considered a slot, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hang tab opening of an elongated shape to form a slot, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vitello in view of Petriekis.

Vitello as modified teaches the claimed bag apparatus except for the hang tab being formed of a composite material formed of woven material laminated between polyethylene.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the hang tab of a woven material laminated between polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### ***Response to Arguments***

8. Applicant's arguments with respect to amended claims 1,3-5 and new claims 10-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

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Typed or printed name of person signing this certificate

Signature\_\_\_\_\_

Date\_\_\_\_\_

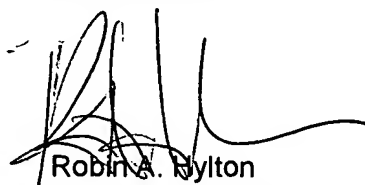
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
April 6, 2005



Robin A. Hylton  
Primary Examiner  
GAU 3727